

## **Exhibit B-6**

## **PUBLIC INTEREST STATEMENT**

### **I. INTRODUCTION**

Nextel Spectrum Acquisition Corp. (“Assignee”) and WorldCom Broadband Solutions, Inc. (debtor-in-possession) (“WBS”) and various affiliates of WBS<sup>1</sup> (collectively, “Assignors”) hereby request authority, pursuant to section 310(d) of the Communications Act of 1934, as amended,<sup>2</sup> for approval of assignment of various wireless licenses from Assignors to Assignee (the “Assignment Applications”). The licenses subject to this proposed assignment (“Licenses”) are in the following services: Multipoint Distribution Service (“MDS”), Multichannel Multipoint Distribution Service (“MMDS”), Wireless Communications Service (“WCS”), point-to-point microwave, 800 MHz land mobile radio service, cable television relay service (“CARS”), and satellite receive-only earth stations. As described below, the proposed assignment complies with the Commission’s rules and will serve the public interest.

### **II. DESCRIPTION OF THE APPLICANTS**

#### **A. The Assignors**

The licenses that are the subject of the Assignment Applications are held by WBS, a Delaware corporation, and the following entities, each of which is directly or indirectly controlled by WorldCom, Inc. (debtor-in-possession) (“WorldCom”), a Georgia corporation: CS Wireless Systems, Inc. (debtor-in-possession), a Delaware corporation, and Wireless Video Enterprises, Inc. (debtor-in-possession), a California corporation. In

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<sup>1</sup> See, *infra* Section I A

<sup>2</sup> 47 U.S.C. § 310(d)

July and November 2002, WorldCom and substantially all of its active U.S. subsidiaries, including the Assignors, filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code to reorganize their business and financial structure. As a result of the bankruptcy filing, WorldCom filed for Commission approval, *inter alia*, of the involuntary *pro forma* assignment of the wireless licenses held by Assignors to the Assignors as debtors-in-possession in July and August of 2002. The Commission granted these applications.<sup>3</sup>

The Assignors currently provide fixed wireless broadband data services to approximately 1400 small and medium sized business customers in 13 markets.<sup>4</sup> Service offerings range from symmetrical 384 kbps to 1.5 Mbps downstream/512 kbps upstream.

All of the licenses, including the MDS and MMDS licenses, are operated on a non-common carrier basis. Assignors have never elected to operate as a common carrier, and Assignor has not in fact operated as a common carrier. Rather, as described in more detail below, Assignors have offered service to their customers on an individualized basis, which comports fully with the Commission's Rules.

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<sup>3</sup> See *Public Notice*, Report No. SES-00417 (Aug. 7, 2002); *Public Notice*, DA 02-3350 (Dec. 5, 2002), *Public Notice*, Report No. 3878 (Dec. 18, 2002).

<sup>4</sup> WBS plans to terminate its broadband data service to these 1400 customers on September 30, 2003. WBS has notified these customers of this planned termination of service by letter dated July 25, 2003. WBS customers may terminate service prior to September 30 without incurring an early termination penalty, and WBS will work to provide customers with alternative means of obtaining broadband access. WBS will file the appropriate notification with the Commission seven days prior to the termination of service. Because the Licenses are not operated on a common carrier basis, the provisions of Sections 21.910 and 27.66(b), 47 C.F.R. §§ 21.910, 27.66(b), do not apply to WBS's planned termination of service. WBS and Nextel are aware of the Commission's service requirements and will provide services consistent with the FCC's rules prior to and after closing of the assignment applications.

In particular, Section 21.903(b) of the Commission's Rules provides that "Multipoint Distribution Service stations may render any kind of communications service consistent with the Commission's rules on a common carrier or non-common carrier basis. . ."<sup>5</sup> The Commission and courts have long recognized that a common carrier "offers service indiscriminately to the general public," whereas private carriers "make individualized decisions regarding the terms and conditions of their service offerings."<sup>6</sup> That is, while common carriers indiscriminately serve the public, private carriers are "free to determine to whom, and on what terms, service will be offered" even if services are offered on a subscription basis.<sup>7</sup>

Assignors have not indiscriminately held out their service offerings to the public. Nor have Assignors ever filed a tariff for their services. Instead, Assignors negotiate individualized service contracts with their customers

**B. The Assignee**

Assignee, a Delaware corporation, is a wholly owned subsidiary of Nextel Communications, Inc. ("Nextel"), a Delaware corporation. Nextel currently provides commercial mobile radio service ("CMRS") in some 400 cities in the U.S. serving over eleven million subscribers, and is one of at least six CMRS providers with a national

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<sup>5</sup> 47 C.F.R. § 21.903(b)

<sup>6</sup> See, e.g., *In the Matter of Request for Extension of Waiver of Mobil Oil Telecom, Ltd.*, Order, 5 FCC Rcd 5812, ¶ 2 (1990); See also *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630 (D.C. Cir.), cert. denied, 425 U.S. 992 (1976)

<sup>7</sup> See, e.g., *In the Matter of Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules to Provide Interactive Video and Data Services*, Report and Order, 7 FCC Rcd. 1630, ¶ 54 (1992).

footprint.<sup>8</sup> Nextel has invested more than \$7 billion to establish a national digital network to provide a full range of wireless communications services in competition with other CMRS providers. Nextel's digital CMRS service integrates in a single mobile handset a digital dispatch service (known as Nextel Direct Connect<sup>(sm)</sup>) with interconnected mobile telephone service, Internet access, short messaging and mobile data service.<sup>9</sup> By offering this integrated package of services, Nextel has become a significant competitor to the established CMRS carriers throughout the U.S. and continues to compete successfully in the provision of CMRS services.

### **III. DESCRIPTION OF THE TRANSACTION**

On June 3, 2003, WorldCom received bankruptcy court approval to conduct an auction to sell certain assets, including the rights in and to the Licenses held by the Assignors. This auction was held on June 26-27, 2003, and following its conclusion, WorldCom determined that the Assignee had submitted the highest and best offer in the auction. The Assignors and Assignee subsequently entered into an Asset Purchase Agreement, dated July 8, 2003, for the sale of substantially all of the assets of the Assignors, including the rights in and to the Licenses, to Assignee for \$144 million in cash and non-cash consideration consisting of a three year extension of a customer contract between subsidiaries of WorldCom and Nextel. On July 22, 2003, the

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<sup>8</sup> See *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Eighth Report, FCC 03-150, WT Docket No. 02-379, ¶ 40 (released July 14, 2003) ("Eighth CMRS Competition Report").

<sup>9</sup> Nextel's Direct Connect is a significant advancement over traditional analog dispatch services because it expands the typical dispatch service coverage area, uses the spectrum more efficiently, and provides extra security through the use of digital technology.

bankruptcy court entered an Order approving, among other things, the terms and conditions of the Asset Purchase Agreement, as modified in certain respects. Attached as Exhibit II 6 to FCC Form 305 is a copy of the Asset Purchase Agreement.<sup>10</sup> The Assignors and the Assignee now seek Commission consent to the assignment of the Licenses to Assignee as contemplated by this Agreement.

#### **IV. THE PROPOSED ASSIGNMENT COMPLIES WITH THE COMMISSION'S RULES AND WILL SERVE THE PUBLIC INTEREST**

##### **A. The Proposed Transaction Will Enhance Nextel's Ability to Offer New Digital Wireless Services to Consumers**

Although Nextel is still in the process of developing specific business and technical plans for the use of the Licenses, the proposed assignment would provide it with additional spectrum capacity and flexibility to expand its digital wireless services and 3G mobile innovations. Nextel has engaged in a number of transactions to acquire spectrum licenses over the past ten years. Nextel has often taken underutilized spectrum (particularly SMR spectrum), invested significantly in technology, and increased the number of subscribers supported on the spectrum by orders of magnitude. Nextel plans to apply the expertise it has gained in these prior transactions to the spectrum rights it proposes to acquire here. Much of the spectrum the Commission has allocated for MDS and MMDS has been underutilized over the past several years. Nextel is an industry leader in developing and providing innovative wireless products, services, and solutions, and will apply this same leadership, along with its technical expertise in developing underutilized spectrum, to the MDS and other spectrum rights it would acquire under the

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<sup>10</sup> The parties have included with the Asset Purchase Agreement all of the publicly available schedules. The other schedules, which contain sensitive commercial information, were filed under seal with the Bankruptcy Court.

proposed assignment.<sup>11</sup> The proposed transaction will enhance consumers' competitive alternatives by furthering Nextel's ability to offer a greater menu of the wireless services consumers are demanding in today's marketplace, thus furthering the Commission's goals of maximizing the efficient use of the spectrum and promoting competition. The Wireless Telecommunications Bureau has recognized that Nextel's deployment of efficient digital technologies provides a direct public interest benefit, and the addition of Assignors' spectrum will enhance Nextel's ability to continue this trend<sup>12</sup>

The Commission has issued a Notice of Proposed Rulemaking ("*MDS/ITFS NPRM*") that proposes substantial changes to the rules governing MDS, MMDS, and Instructional Television Fixed Service ("*ITFS*") licenses<sup>13</sup> These proposed changes will have a significant impact on the use of these licenses, whether by Nextel or any other licensee. The *MDS/ITFS NPRM* (at ¶¶ 49-57, 98-106) seeks comment on realigning the MDS and ITFS bands and the appropriate mechanism for transitioning incumbent

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<sup>11</sup> Although MDS Channels 1 and 2 and the other MDS and MMDS channels are located in different spectrum bands (2.1 GHz and 2.5 GHz), Nextel currently has no plans to treat the MDS and MMDS spectrum rights it would acquire under the proposed transaction differently for purposes of offering services to customers.

<sup>12</sup> *In re Applications of Pittencrieff Communications, Inc. Transferor, and Nextel Communications, Inc. Transferee, For Consent to Transfer Control of Pittencrieff Communications, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 8935, ¶ 65 (WTB 1997), *In re Applications of Chadmoore Wireless Group, Inc. and Various Subsidiaries of Nextel Communications, Inc., For Consent to Assignment of Licenses*, Memorandum Opinion and Order, 16 FCC Rcd 21105, ¶ 19 (2001); *In re Applications of Pacific Wireless Technologies, Inc. and Nextel Of California, Inc. For Consent to Assignment of Licenses*, Memorandum Opinion and Order, 16 FCC Rcd 20341, ¶ 18 (2001).

<sup>13</sup> *In the Matter of Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, 18 FCC Rcd 6722 (2003).

licensees to the realigned band plan. Nextel has acquired substantial experience that would prove quite useful in such a transitioning process. In particular, over the past five years, Nextel has relocated numerous incumbent licensees in the 800 MHz band to clear SMR channels for CMRS use in Economic Areas throughout the country. Grant of the Assignment Applications would permit Nextel to apply this experience to the planning and implementation of the Commission's proposed realignment of the MDS and ITFS bands. This, in turn, would help advance the *MDS/ITFS NPRM's* goals of promoting competition, innovation and investment in these bands.<sup>14</sup>

**B. The Proposed Assignment Will Have No Anticompetitive Effects**

The proposed license assignments raise no competition issues because the Assignors and the Assignee compete in different product markets. As described above, Assignors offer *fixed* wireless broadband data services to small and medium-sized businesses on a non-common carrier basis, while Nextel offers CMRS.<sup>15</sup> These different services are not reasonable substitutes for each other. A consumer seeking a CMRS provider clearly does not view the fixed services currently offered over the Licenses as an option, while a business customer seeking a broadband data service does not view

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<sup>14</sup> *MDS/ITFS NPRM* ¶ 1

<sup>15</sup> The Commission has previously treated CMRS providers as part of a single product market. See *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act*, Third Report and Order, 9 FCC Rcd 7988, ¶¶ 37 *et seq.* (1994), see also *Applications of Nextel Communications, Inc. for Transfer of Control of OneComm Corporation*, Order, 10 FCC Rcd 3361, ¶ 27 (WTB 1995); *In the Matter of Applications of Motorola, Inc. For Consent to Assign 800 MHz Licenses to Nextel Communications, Inc.*, Order, 10 FCC Rcd 7783, ¶ 17 (WTB 1995). Moreover, Congress created the CMRS classification of mobile services in 1993 due to the convergence of numerous private and common carrier mobile services, such as cellular, 800 MHz SMR and 900 MHz SMR, that were fulfilling similar consumer needs through similar service offerings. *Omnibus Budget Reconciliation Act of 1993*, Pub. L. No. 103-66, 107 Stat. 312 (1993).



Nextel's current mobile telecommunications services as an option. Indeed, in its most recent report regarding the deployment of advanced telecommunications services, the Commission listed cable modem service, DSL, optical technologies, terrestrial fixed wireless services (including MDS and WCS), and satellite services as "last mile" high-speed data technologies, but did not include CMRS in this list of competitors.<sup>16</sup>

Even assuming the Assignors and the Assignee competed in the same product and geographic markets, the proposed transaction would not raise competition concerns. The Commission has found that "there is effective competition in the CMRS marketplace," including in rural areas.<sup>17</sup> Nextel's acquisition of Assignors' rights in the Licenses clearly will not diminish this robust competition in any area. The Assignors have no mobile telecommunications service customers, and have only 1400 fixed wireless customers in 13 markets – well under one tenth of one percent of the total number of high-speed data subscribers in the business sector.<sup>18</sup> Moreover, although Nextel intends

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<sup>16</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Third Report, 17 FCC Rcd 2844, ¶¶ 42-60 (2002) ("2002 Advanced Services Deployment Report"). In this report, the Commission defined a "high-speed" data service as providing a downstream or upstream transmission speed of more than 200 kilobits per second ("kbps") *Id* ¶ 9. Although CMRS carriers, including Nextel, offer mobile data services, the data rates of these services currently fall below 200 kbps. *See Eighth CMRS Competition Report* ¶ 18 (mobile telephone carriers offer mobile data services at "data transfer speeds typically ranging from 30 to 70 [kbps] per second..., with maximum data rates of up to 144 kbps for some carriers").

<sup>17</sup> *Eighth CMRS Competition Report* ¶¶ 12-13.

<sup>18</sup> *See 2002 Advanced Services Deployment Report* ¶¶ 30-31 (reporting that, as of June 30, 2001, there were a total of approximately 7.8 million high-speed residential subscribers and 1.8 million high-speed lines in service to large business and institutional customers).

to use the Licenses to provide innovative services to customers, the current band plan and technical rules governing the MMDS spectrum, which makes up a significant portion of the Licenses, makes the provision of such services difficult. As the Commission has recognized in the pending proceeding that proposes to revise these rules, “the existing regulatory structure has limited the ability of operators to deploy two-way services and made it nearly impossible to provide mobile services.”<sup>19</sup>

**C. The Assignee Is Qualified to Hold the Licenses**

The Assignee is legally, financially, technically, and otherwise qualified to hold the Licenses. The Assignee is not a cable operator, and therefore the proposed transaction does not implicate the cable-MDS cross-ownership provisions set forth in section 613 of the Act and section 21.912 of the Commission’s rules.<sup>20</sup> The proposed Assignment will also comply with the foreign ownership provisions of section 310 of the Act and section 21.4 of the Commission’s Rules.<sup>21</sup>

**V. PROCEDURAL ISSUES**

**A. Sections 1.935 and 21.29 of the Rules**

In response to objections raised in the bankruptcy proceeding by various ITFS and MMDS licensees (“Spectrum Lessors”) who have entered into excess capacity agreements with WBS or its affiliates, WorldCom and Nextel amended the Asset Purchase Agreement on July 22, 2003 to modify, among other things, Sections 7.26 and 7.29 of the Agreement (the “Modifications”). See Appendix A hereto. The Modifications

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<sup>19</sup> *MDS/ITFS NPRM* ¶ 2 n.3

<sup>20</sup> 47 U.S.C. § 533(a); 47 C.F.R. § 21.912.

<sup>21</sup> 47 U.S.C. § 310; 47 C.F.R. § 21.4.

expanded and clarified the rights of the Spectrum Lessors to access certain equipment and towers used or useful for their operations

In exchange for WorldCom and Nextel agreeing to make the Modifications, the Spectrum Lessors agreed to withdraw their objections in the bankruptcy court. There was no other consideration, cash or non-cash, given by WorldCom or Nextel to the Spectrum Lessors, or from the Spectrum Lessors to WorldCom or Nextel. Further, there was no written or verbal agreement between the Spectrum Lessors and WorldCom or between the Spectrum Lessors and Nextel that would prohibit the Spectrum Lessors from filing petitions to deny, informal objections, or any other pleading at the Commission regarding the Assignment Applications. As a consequence, sections 1935 and 2129 of the Commission's rules, which govern agreements to dismiss FCC pleadings in certain cases, are not applicable.<sup>22</sup>

#### **B. WorldCom Reorganization Transaction**

WorldCom and its subsidiaries (as debtors-in-possession) have filed applications ("Reorganization Applications") to assign various FCC authorizations and licenses, including the Licenses, to these subsidiaries operating under the newly reorganized MCI, Inc. ("Reorganized Entity") as part of its emergence from Chapter 11 bankruptcy. The Commission placed these Reorganization Applications on Public Notice on July 9, 2003.<sup>23</sup>

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<sup>22</sup> In an abundance of caution, Nextel and WorldCom are providing Declarations from each party that certify that there was no consideration given by WorldCom or Nextel to the Spectrum Lessors, or from the Spectrum Lessors to WorldCom or Nextel. Those declarations are attached at Appendix B.

<sup>23</sup> *Public Notice*, DA 03-2193, WC Docket No. 02-215 (released July 9, 2003)

As contemplated by the July 9, 2003 Public Notice (at note 12), the Assignment Applications to assign the Licenses from the Assignors (as debtors-in-possession) to the Assignee are being filed during the pendency of the Reorganization Applications. The Assignors and the Assignee request that the Assignment Applications be accepted for filing and processed separately from the Reorganization Applications. As provided in the July 9, 2003 Public Notice, upon grant and consummation of the Assignment Applications, WorldCom will amend its Reorganization Applications to remove the Licenses from that proposed transaction to the extent the Reorganization Applications are still pending before the Commission. In the event the Reorganization Applications are approved and consummated prior to the grant of the Assignment Applications, the Assignors will file any necessary amendments to the Assignment Applications to reflect the assignment and/or transfer of the Licenses to the Reorganized Entity. In such an event, the Assignors and the Assignee request a blanket exemption from any applicable cut-off rules so that any such amendment to the Assignment Applications would not be treated as a major amendment requiring a second public notice period. Treatment of these applications in this manner would be consistent with prior FCC decisions regarding the processing of assignment or transfer applications that are affected by larger transactions undertaken for legitimate business purposes<sup>24</sup>

**C. New Authorizations, Construction Permits, and Pending Applications**

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<sup>24</sup> See, e.g., *In the Matter of Applications of PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 8891, ¶ 45 (WTB 1997); *In the Matter of Applications of Craig O. McCaw and American Telephone and Telegraph Co.*, Memorandum Opinion and Order, 9 FCC Rcd 5836, ¶ 137 n.300 (1994); *In the Matter of Application of Centel Corp. and Sprint Corp.*, Memorandum Opinion and Order, 8 FCC Rcd 1829, ¶ 23 (CCB 1993)

The Assignors have on file applications for new or modified facilities and may file for additional authorizations for new or modified facilities, which may be granted during the pendency of the Assignment Applications. Accordingly, the Assignors and the Assignee request that the Commission's grant of the Assignment Applications include authorization for the Assignee to receive assignment of: (1) any authorizations issued to the Assignors in the following services: MDS, MMDS, WCS, point-to-point microwave, 800 MHz land mobile radio service, CARS, and satellite receive-only earth stations from the date of the Assignment Applications until the consummation of the transaction following Commission approval; (2) construction permits held by the Assignors that mature into licenses after closing and that may have been omitted from the Assignment Applications, and (3) applications that have been, or which may be, filed by the Assignors and that are pending at the time of consummation of the transaction. Such action would be consistent with prior decisions of the Commission.<sup>25</sup>

## VI. CONCLUSION

For the reasons stated above, the assignment of the licenses to the Assignor will comply with the Commission's rules and serve the public interest. The Assignors and the Assignee consequently request that the Commission grant the Assignment Applications.

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<sup>25</sup> See, e.g., *AT&T-MediaOne Merger Order*, 15 FCC Rcd 9816, ¶ 185 (2000); *In the Matter of Applications of PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 8891, ¶¶ 45, 47 (WTB 1997). *In the Matter of Applications of Pacific Telesis Group and SBC Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 2624, ¶ 93 (1997); *In the Matter of Applications of Craig O. McCaw and American Telephone and Telegraph Co.*, Memorandum Opinion and Order, 9 FCC Rcd 5836, ¶ 137 n.300 (1994).

## **APPENDIX A**

**EXHIBIT E**  
**AMENDMENTS TO THE AGREEMENT**

1. The definition of "FCC Rules" in Section 1.01 of the Agreement is hereby amended and restated in its entirety to read as follows:

"'FCC Rules' means Title 47 of the Code of Federal Regulations, as amended at any time and from time to time, and any and all FCC decisions and policies issued pursuant to such regulations and the Communications Act, as hereinafter defined."

2. Section 5.04(iii) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(iii) filings with and approvals of the Federal Communications Commission (the "FCC") as required under the Communications Act of 1934, as amended, (the "Communications Act") and the FCC Rules,"

3. Section 6.04(iii) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(iii) filings with and approvals of the FCC as required under the Communications Act and the FCC Rules,"

4. Section 2.02(iv) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(iv) the rights in and to the FCC Licenses listed on Schedule 2.02(iv), and any Company Pending Applications that are granted and licenses that are issued as a result thereof by the FCC to any Seller during the period from the date of this Agreement to the Closing Date (the "Company FCC Licenses");"

5. The second sentence of Section 5.06(a) of the Agreement is hereby amended and restated in its entirety to read as follows:

"For the avoidance of doubt, the foregoing sentence of this Section 5.06(a) does not apply to Sellers' rights, titles, if any, and interests under (i) the Real Property Leases, which are instead addressed in Section 5.07 or (ii) FCC Licenses, which are instead addressed in Sections 5.11, 5.12 and 5.13 "

6. Section 7.26(b) (Favorable Title Ruling) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(b) Favorable Title Ruling.

(i) If the Bankruptcy Court rules that a Seller has good title to the Common Equipment and that Seller is entitled to transfer good title to such Common Equipment to Purchaser free and clear of all Liens (other than those that would be terminated at the Closing pursuant to the Approval Order), then such



Seller shall transfer such Common Equipment to Purchaser at the Closing as provided in this Agreement.

(ii) In the event that a Seller rejects an Affected Lessor's spectrum lease, then (A) Sellers shall, at their sole option, either continue to operate and permit such Affected Lessor to use the Common Equipment until the Closing Date or, if Sellers cease to operate such Common Equipment, will provide such Affected Lessor with thirty (30) days prior written notice of ceasing to operate such equipment and (B) subject to subsection (iv) of this Section 7.26(b), (x) after the Closing and for so long as Purchaser continues to operate the Common Equipment, Purchaser will provide such Affected Lessor with free use of and physical access to such Common Equipment; (y) if Purchaser ceases to use the Common Equipment, then Purchaser shall (1) provide written notice of such discontinuance to the Affected Lessor, and (2) grant the Affected Lessor a one time option to purchase or otherwise acquire the Common Equipment within thirty (30) days of the date of such notice, on the terms and conditions (other than with respect to the timing of the purchase or acquisition) set forth in the Affected Lessor's rejected spectrum lease; and (z) if Purchaser wishes to terminate, not renew or otherwise abandon a Tower Site Lease with respect to a Transmission Tower or Tower Site upon which Common Equipment is located or otherwise ceases to use such Transmission Tower or Tower Site, Purchaser shall offer to assign such Tower Site Lease to the Affected Lessor subject to the receipt of any third party consents and approvals that may be necessary in connection with such assignment; *provided, however*, that Purchaser shall have no obligation to incur any out-of-pocket costs or expenses in connection with such assignment (including, without limitation, legal fees and expenses) unless Purchaser has received a written undertaking from the Affected Lessor (in form and substance satisfactory to Purchaser), to reimburse or pay Purchaser for such reasonable costs or expenses or otherwise enters into a similar expense arrangement that is satisfactory to Purchaser, in which case Purchaser shall use its commercially reasonable efforts to facilitate such assignment; *provided, further*, that the Affected Lessor must accept Purchaser's offer to assign such Tower Site Lease within thirty (30) days after the date of written notice of such offer.

(iii) If an Affected Lessor fails to exercise its option to purchase or acquire the Common Equipment or assume the Tower Site Lease within the aforementioned thirty (30)-day periods, Purchaser shall have no further obligation to sell, assign, transfer or otherwise convey the Common Equipment or the related Tower Site Lease, as applicable, to the Affected Lessor and shall have no further obligation to provide use of or physical access to such Common Equipment to the Affected Lessor.

(iv) Notwithstanding anything to the contrary in this Agreement or any Ancillary Agreement, Purchaser's obligation to comply with the provisions of Section 7.26(b)(ii) are conditioned upon Purchaser receiving a written agreement and acknowledgment from the Affected Lessor addressed to Purchaser

to the effect that: (A) Purchaser is in no way assuming any of the obligations under the rejected spectrum lease (or under any other spectrum lease which is not included in the final Acquired Assets); (B) although Purchaser will grant free use of the Common Equipment as provided in Section 7.26(b)(ii), Purchaser will not have any obligation to maintain such Common Equipment or any responsibility for the functionality of that Common Equipment; (C) the Affected Lessor will not be entitled to physical access to Common Equipment unless (i) Purchaser will incur no fees, charges, expenses or other costs in connection with providing such access, (ii) Purchaser gives its prior written consent to such access (such consent not to be unreasonably withheld or delayed), and (iii) either Purchaser's Tower Site Lease expressly permits Purchaser to allow such Affected Lessor to have physical access to the Common Equipment or such Affected Lessor has obtained written permission to physically access the Common Equipment from the lessor under the Tower Site Lease; (D) if Purchaser consents to the Affected Lessor receiving physical access to the Common Equipment as contemplated in the preceding clause (C), the Affected Lessor must (i) comply with any and all reasonable conditions imposed by Purchaser in connection with granting such access, including, without limitation, any requirement that such access occur under the supervision of Purchaser's designated technical specialists and in a manner that does not interfere with the operation of the Transmission Tower or premises, (ii) in a writing signed by Purchaser and such Affected Lessor, to the extent permitted by law, indemnify Purchaser and hold Purchaser harmless from and against any loss, cost or damage suffered or incurred by Purchaser or any claim against Purchaser that may arise from or in connection with the Affected Lessor's physical access to the Common Equipment and/or entry to the premises, Transmission Tower or Tower Site, (iii) maintain comprehensive general liability (occurrence) insurance in an amount of not less than \$1,000,000 covering any accident, injury or claim for damages or other recourse arising in connection with Purchaser granting physical access to the Common Equipment and/or entry to the premises, Transmission Tower or Tower Site to the Affected Lessor, to be evidenced by delivering to Purchaser, prior to the Affected Lessor physically accessing the Common Equipment and/or entering the premises, Transmission Tower or Tower Site, a certificate of insurance that names the Purchaser as an additional insured thereunder, or in the event that the Affected Lessor is a governmental instrumentality that is self-insured under state law, provides evidence of self-insurance in an amount not less than \$1,000,000; and (iv) restore the premises, Transmission Tower and Tower Site and any improvements thereto to the condition in which the same were found before any such entry upon the premises, Transmission Tower or Tower Site was undertaken; (E) the duration of any right to use the Common Equipment shall cease upon the earlier to occur of (i) the expiration of the thirty (30) day offer period within which to purchase or acquire the Common Equipment after Purchaser discontinues use of the Common Equipment, or (ii) the expiration of the thirty (30) day offer period within which to assume a Tower Site Lease as contemplated in Section 7.26(b)(ii)(C); (F) the Affected Lessor may not assign its right to use Common Equipment or its right to assume a Tower Site Lease and any attempt to do so will terminate the Affected

Lessor's right to assume such Tower Site Lease and any right to use such Common Equipment; and (G) Purchaser's obligations under this Section 7.26(b) shall immediately terminate without liability to Purchaser if the Affected Lessor leases the spectrum under its FCC License to any Person other than Purchaser or one of its Affiliates.

(v) For the avoidance of doubt, the provisions of this Section 7.26(b) shall be applied on a site-by-site basis with respect to the Common Equipment located at such site and neither Sellers nor Purchaser shall have any obligation to operate, provide use of or access to Common Equipment to an Affected Lessor at any other Transmission Tower or Tower Site."

7. Section 7.29(b) (Third Party Dedicated Equipment) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(b) Subject to the provisions of Section 7.29(a), within six (6) months after the Closing Date, Sellers shall sell, assign, transfer, convey and deliver all of their respective right, title and interest in and to any Third Party Dedicated Equipment at its fair market value to the third party holder of the ITFS FCC License to whom such equipment's use is dedicated, on reasonable terms and conditions otherwise satisfactory to Sellers. Prior to any such sale, Sellers shall permit such ITFS FCC licensees to continue to use such equipment free of charge; *provided, however*, that Sellers shall have no obligation to maintain, repair, insure or operate any Third Party Dedicated Equipment or any responsibility for the functionality of such equipment. If and to the extent that Sellers do not sell, assign, transfer or otherwise dispose of any such equipment within six (6) months after the Closing Date, then Sellers shall execute a bill of sale to assign and transfer the remaining equipment not so disposed of to Purchaser at no cost to Purchaser; *provided, however*, that if prior to such date Sellers have entered into an agreement to sell, assign, transfer or otherwise dispose of any such remaining equipment, Sellers shall transfer the same to Purchasers only if and when such agreement is terminated prior to the consummation of such sale, assignment, transfer or other disposition."

8. The following paragraph shall be inserted as a new paragraph at the end of Section 7.29(b) (Third Party Dedicated Equipment) of the Agreement:

"If any Third Party Dedicated Equipment is located on a portion of an acquired Transmission Tower or a Transmission Tower or Tower Site that is the subject of an acquired Tower Site Lease, after the Closing, Purchaser shall provide the owner of such equipment with continued authorization to locate that Third Party Dedicated Equipment on Purchaser's leased portion of that Transmission Tower or Tower Site, or if that Transmission Tower is an acquired Transmission Tower, on the portion of that Transmission Tower where such Third Party Dedicated Equipment is located as of the date of this Agreement, on commercially reasonable terms (including economic terms) to be agreed between Purchaser and the owner of such equipment; *provided, however*, that

(i) Purchaser's obligations under this Section 7.29 with respect to the Third Party - Dedicated Equipment shall immediately terminate without liability to Purchaser if the owner of such equipment leases the spectrum under its FCC License to any Person other than Purchaser or one of its Affiliates, (ii) the owner of the Third Party Dedicated Equipment may not assign its right to locate the Third Party Dedicated Equipment on the applicable Transmission Tower or Tower Site and any attempt to do so will terminate Purchaser's obligation to permit the owner of such equipment to locate such Third Party Dedicated Equipment on such Transmission Tower or Tower Site, (iii) Purchaser is in no way assuming any of the obligations under any rejected spectrum lease relating to such Third Party Dedicated Equipment, (iv) although Purchaser will authorize the continued location of Third Party Dedicated Equipment on Transmission Towers or Tower Sites as contemplated above, Purchaser will not have any obligation to maintain Third Party Dedicated Equipment, any Transmission Tower or any Tower Site or any responsibility for the functionality of any Third Party Dedicated Equipment, any Transmission Tower or any Tower Site, (v) Sellers shall be authorized to locate any Third Party Dedicated Equipment it may own upon the premises or Transmission Tower where it is located as of the date of this Agreement for the six (6)-month period following the Closing Date free of charge, and (vi) the duration of any authorization to locate Third Party Dedicated Equipment on any portion of any Transmission Tower or Tower Site pursuant to this paragraph shall terminate, with reasonable prior notice to the owner of such equipment, upon the earlier to occur of (A) Purchaser's discontinued use of any essential equipment currently located on the Transmission Tower or Tower Site, or (B) Purchaser's termination or abandonment of the Tower Site Lease or Transmission Tower, as applicable. For the avoidance of doubt, if Sellers sell, assign, transfer or otherwise dispose of any Third Party Dedicated Equipment after the Closing in compliance with Sellers' obligations under this Section 7.29, then provided such assignee or transferee is the holder of the ITFS FCC License to whom such equipment's use is dedicated, Purchaser shall provide the new owner of such equipment with the same rights as set forth in this paragraph (other than the rights set forth in subsection (v) of this paragraph), provided that the new owner and Purchaser can agree upon commercially reasonable terms for the continued location of the equipment on Purchaser's leased portion of that Transmission Tower or Tower Site, or if that Transmission Tower is an acquired Transmission Tower, on the portion of that Transmission Tower where such Third Party Dedicated Equipment is located as of the date of this Agreement."

9. The following items shall be added at the end of the Tower Site Leases portion of Schedule 2.02(i) (Real Property Leases) of the Agreement, such items to be additional Tower Site Leases:

State	Market	Lessor	Site Address	Expiration Date	Monthly Payment
CA	Los Angeles	MultiInvestment Assoc.	3375 Rio Honda El Monte, CA	2006.03.16	2,659.00
CA	Los Angeles	Bedford Property	3002 Dow Ave Tustin, CA	2006.01.31	2,878.00

## **APPENDIX B**

## DECLARATION OF JOHN WILLMOTH

I am employed by Nextel Communications, Inc. as Vice President.

I was responsible for negotiating the Asset Purchase Agreement ("Purchase Agreement") dated July 8, 2003 for the sale of substantially all of the assets of WorldCom Broadband Solutions, Inc. (the "Assets") to Nextel Spectrum Acquisition Corp. ("Nextel"), a subsidiary of Nextel Communications, Inc., for \$144 million in cash and non-cash consideration consisting of a 3 year extension of a customer contract between subsidiaries of WorldCom, Inc. and Nextel Communications, Inc.

The Purchase Agreement was amended on July 22, 2003 to modify, among other things, Sections 7.26 and 7.29 (the "Modifications"). The Modifications expanded and clarified the rights of spectrum lessors to access certain equipment and towers used or useful for their operations.

In exchange for WorldCom and Nextel agreeing to make the Modifications, various ITFS and MMDS lessors (the "Spectrum Lessors"), who had filed with the Bankruptcy Court objections or limited objections to the sale of the Assets, agreed to withdraw their objections. There was no other consideration, cash or non-cash, given by Nextel to the Spectrum Lessors, or from the Spectrum Lessors to Nextel. Further, there was no written or verbal agreement between Nextel and the Spectrum Lessors that would prohibit the Spectrum Lessors from filing petitions to deny, informal objections or any other pleadings with the Federal Communications Commission ("FCC") in response to the assignment of license applications to be filed by WorldCom to assign to Nextel the FCC Licenses that are part of the Assets.

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge and belief.

By:



John Willmoth

Date: August 5, 2003